# STATE OF MICHIGAN

# COURT OF APPEALS

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ESTATE OF WARREN DROOMERS, by BARBARA DROOMERS, Personal Representative,

Plaintiff-Appellee,

v

JOHN R. PARNELL, JOHN R. PARNELL & ASSOCIATES, and MUSILLI, BAUMGARDNER, WAGNER & PARNELL, PC,

Defendants,

and

SCOTT E. COMBS,

Appellant.

UNPUBLISHED
October 17, 2017

No. 333691
Oakland Circuit Court
LC No. 2000-024779-CK

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ESTATE OF WARREN DROOMERS, by BARBARA DROOMERS, Personal Representative,

Plaintiff-Appellee,

v

JOHN R. PARNELL, JOHN R. PARNELL & ASSOCIATES, and MUSILLI, BAUMGARDNER, WAGNER & PARNELL, PC,

Defendants,

and

RALPH MUSILLI,

Appellant.

Nos. 333692; 334822
Oakland Circuit Court
LC No. 2000-024779-CK

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Before: SHAPIRO, P.J., and HOEKSTRA and M. J. KELLY, JJ.

PER CURIAM.

These consolidated appeals arise out of objections made to a writ of garnishment. In Docket No. 334822, appellant Ralph Musilli appeals by leave granted[1] the trial court's June 14, 2016 order denying his objections and compelling the garnishee Musilli, Brennan, & Associates, PLLC to honor a wage garnishment. In Docket Nos. 333691 and 333692, Musilli and appellant Scott E. Combs, Musilli's attorney, appeal as of right the trial court's June 15, 2016 order awarding sanctions in the amount of $2,125 pursuant to MCR 2.114(E). This Court consolidated the appeals.[2] Because the trial court did not abuse its discretion by denying Musilli's objections to the garnishment and awarding sanctions under MCR 2.114(E), we affirm.

## I. FACTS

This matter has a long and tortured history that has already been described by this Court on multiple occasions. This Court's most recent opinion regarding the case provides much of the relevant background:

> This appeal originally stems from an underlying breach of contract action that plaintiff's decedent, Warren Droomers, filed against defendants, John R. Parnell, Parnell & Associates, P.C., and Musilli, Baumgardner, Wagner & Parnell, P.C. (MBWP). The procedural history of this case is lengthy, having gone through multiple appeals at this Court.
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> The original claim is related to MBWP's representation of an individual in her lawsuit against General Motors (GM). GM and the individual settled the case, and MBWP received a contingent fee in the amount of $1,057,909.80. On July 25, 2000, Warren Droomers, an attorney, filed a complaint against MBWP, alleging that he referred the GM case to defendants and, under a contractual relationship with MBWP, was entitled to a referral fee in the amount of $352,636.60. Warren Droomers further alleged that he assisted Parnell with the GM case and was entitled to "*quantum meruit* for his valuable services."
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> On December 19, 2002, the trial court ordered MBWP to deposit $352,636.60 into an escrow account and to refrain from transferring any of the firm assets until the escrow account was paid in full. After a bench trial in April and May 2003, the trial court rejected plaintiff's breach of contract claim but

[1] *Droomers v Parnell*, unpublished order of the Court of Appeals, entered February 23, 2017 (Docket No. 334822).

[2] *Droomers v Parnell*, unpublished order of the Court of Appeals, entered February 23, 2017 (Docket No. 334822).

found for plaintiff and against defendants Parnell and MBWP on the theory of quantum meruit, ordering defendants to pay plaintiff in the amount of $240,000, plus costs and statutory interest.

After the bench trial, on October 10, 2003, plaintiff filed a motion for order to show cause why MBWP, appellants [(Musilli and Walter Baumgardner)], and Parnell should not be held in contempt of court for failing to comply with the trial court's December 19, 2002 order to place money into an escrow account. On October 29, 2003, the trial court found MBWP in contempt of court and appointed a receiver for MBWP. On December 16, 2003, the trial court held Parnell, Musilli and Baumgardner in contempt for failing to provide documents to the receiver and for violating the December 19, 2002, order. The trial court ordered them to spend 30 days in jail. Appellants appealed the contempt order. This Court affirmed the trial court's contempt ruling, but remanded for a determination whether the contempt order was civil or criminal in nature. *Droomers v Parnell*, unpublished opinion per curiam of the Court of Appeals, issued June 30, 2005 (Docket No. 253455), slip op at 9.

On remand, after hearing oral argument on December 14, 2005, the trial court entered an order holding appellants in criminal contempt and ordering them to serve 30 days in jail and to pay a judgment in the amount of $431,350. *The trial court rejected appellants' argument that the amount of judgment should be offset by Parnell's alleged settlement with plaintiff.*

On January 4, 2006, appellants filed a motion to amend the judgment, *arguing in part that it must account for plaintiff's settlement with and release of Parnell*, the terms of which must be disclosed. On the January 31, 2006, the trial court entered an order denying appellants' motion.

Appellants appealed the December 14, 2005, judgment on February 17, 2006. This Court dismissed the appeal pursuant to the parties' stipulation on April 21, 2006. *Droomers v Parnell*, unpublished order of the Court of Appeals, entered April 21, 2006 (Docket No. 268480). Around the same time, in March 2006, the trial court dismissed with prejudice its contempt order and the entire action pursuant to a settlement agreement between the parties.

However, the settlement between the parties fell through. On May 1, 2006, plaintiff filed an emergency motion to reinstate and execute the December 14, 2005, contempt judgment against appellants. After a hearing, where appellants' counsel failed to appear, and after appellants filed motions to disqualify the trial judge, Judge Mester, because of a related federal lawsuit and a complaint with the Judicial Tenure Commission, the trial judge eventually entered orders, on June 29, 2007, and April 16, 2008, reinstating the December 2005 criminal contempt judgment against appellants in its entirety.

Appellants appealed the reinstatement of the contempt judgment on May 22, 2007. This Court affirmed the reinstatement of the contempt judgment on

February 12, 2009, but remanded the case to the trial court to determine the amount of statutory interest owed to plaintiff. *Droomers v Parnell*, unpublished opinion per curiam of the Court of Appeals, issued February 12, 2009 (Docket No. 278162) [("*Droomers II*")], slip op, at 1, 9. *Appellants moved for reconsideration, arguing that this Court failed to address their argument concerning Parnell's settlement. This Court denied the motion for reconsideration on April 3, 2009*. *Droomers v Parnell*, unpublished opinion per curiam of the Court of Appeals, issued April 3, 2009 (Docket No. 278162). Appellants filed a motion for leave to appeal with the Supreme Court on May 12, 2009, which was denied on September 28, 2009. *Droomers v Parnell*, 485 Mich 895; 772 NW2d 422 (2009).

On remand, this case was reassigned to Judge Lisa Ortlieb Gorcyca in the trial court who heard a number of motions concerning the updated amount of interest. *She also heard appellants' motions related to plaintiff's settlement agreement with Parnell*, including a request to subpoena Parnell, which the trial judge denied because it was outside the scope of the remand. On April 1, 2009, Judge Gorcyca entered a new judgment, including interest, costs and attorney fees in the amount of $525,981.21.

On August 18, 2009, appellants filed a motion for entry of an order of satisfaction of judgment – the motion that is at issue here – *arguing that plaintiff's settlement with Parnell constituted a partial or full satisfaction of the underlying judgment.* Plaintiff argued in response that appellants were in effect asking the court to modify the December 2005 judgment, which the trial court was not authorized to do. Plaintiff also requested sanctions against appellants for filing a frivolous motion. In their reply brief, appellants denied seeking to amend the December 14, 2005, judgment. They posited that MCR 2.620 offered them a procedure for recognizing the settlement of an outstanding judgment.

On September 1, 2009, *the trial court denied appellants' motion for entry of an order of satisfaction of the judgment because of plaintiff's settlement agreement with Parnell, noting that this Court had rejected a similar argument on two occasions and the trial court had rejected a similar argument on four occasions.* The trial court also ordered sanctions against appellants for filing a frivolous motion. Appellants filed a motion for reconsideration of the trial court's order or relief from judgment on September 22, 2009, which the trial court denied on January 5, 2010. [*Droomers v Parnell*, unpublished opinion per curiam of the Court of Appeals, issued February 15, 2011 (Docket No. 296037) ("*Droomers III*"), pp 2-4 (footnote omitted; emphasis added).]

The last time this matter was before this Court, Musilli and Baumgardner raised two issues arising from the September 1, 2009 order: (1) whether the trial court erred by denying the motion for entry of an order of satisfaction of judgment, and (2) whether the award of sanctions was proper. *Id*. at 4. This Court concluded that it lacked jurisdiction to consider the first issue because there exists no right to appeal a postjudgment order denying a motion seeking an order

of satisfaction of judgment. *Id*. With regard to the question of sanctions, this Court concluded that sanctions were appropriate, explaining:

> Here, the record fully supports the trial court's finding that appellants' motion for entry of an order of satisfaction of judgment was brought to harass, delay the proceeding, and/or increase the cost of litigation. Further, considering the extensive history of this case, appellants cannot seriously contend that their motion was warranted by existing law or brought in a good-faith effort to extend or modify existing law. Appellants first unsuccessfully raised their argument regarding the set off of plaintiff's settlement with John Parnell at the December 14, 2005, hearing, following which the trial court held appellants in criminal contempt, ordered them to serve 30 days in jail, and entered a judgment against them. Appellants raised the issue again in a motion to amend the judgment, which the trial court denied.
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> Although appellants appealed the trial court's decision to this Court, they stipulated to dismiss their appeal because of a purported settlement that also led to the dismissal of the entire action, including the contempt order. *Droomers v Parnell*, unpublished order of the Court of Appeals, entered April 21, 2006 (Docket No. 268480). Appellants then filed a frivolous federal lawsuit against the previous trial court judge and plaintiff's attorneys, which resulted in the imposition of sanctions against them in federal court. They also filed a complaint with the Judicial Tenure Commission against the same trial court judge, which was ultimately dismissed.
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> This Court affirmed the trial court's reinstatement of the contempt judgment, stating "there was sufficient evidence that appellants committed fraud, misrepresentation or other misconduct to warrant relief from the judgment of dismissal." *Droomers v Parnell*, unpublished opinion per curiam of the Court of Appeals, issued February 12, 2009 (Docket No. 278162), slip op at 3. This Court specifically rejected the argument that the reinstatement of the contempt judgment revived appellants' right to appeal the December 14, 2005, order. *Id*. at 4. This Court also determined that appellants failed to create a question of fact regarding the amount of damages and remanded the matter for recalculation of the amount of statutory interest to be incorporated in the judgment. *Id*. at 5. Appellants again raised the issue regarding the set off of plaintiff's settlement with Parnell in their motion for reconsideration, which this Court denied. *Droomers v Parnell*, unpublished order of the Court of Appeals, entered April 3, 2009 (Docket No. 278162). Our Supreme Court likewise rejected the argument in denying appellants' application for leave to appeal. *Droomers v Parnell*, 485 Mich 895; 772 NW2d 422 (2009).
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> Despite this Court's remand for the narrow purpose of recalculating the amount of statutory interest, appellants again raised the set off issue in the trial court and subpoenaed Parnell to testify at a deposition. The trial court recognized that both the previous trial court judge and this Court had already rejected that

argument and quashed the subpoena. The court denied appellants' motion for reconsideration.

> In spite of the fact that their argument regarding plaintiff's settlement agreement with Parnell had been rejected numerous times, appellants again asserted it in their motion for entry of an order of satisfaction of judgment. This time, the trial court imposed sanctions for filing a frivolous motion. The history of this case illustrates that the motion was not warranted by existing law or a good-faith argument for the extension or modification of existing law. Further, the trial court did not clearly err in finding that the motion "is but one more continuous and repetitive motion in furtherance of [appellants'] attempt to harass Plaintiff and increase the cost of litigation." Once the trial court determined that appellants violated MCR 2.114(D), the imposition of sanctions was mandatory. MCR 2.114(E); *Guerrero* [*v Smith*], 280 Mich App [647,] 678 [; 761 NW2d 723 (2008)]. Lastly, contrary to appellants' argument, MCR 2.114 is not limited to frivolous claims and defenses, or only to pleadings, but rather applies to "all pleadings, *motions*, affidavits, and other papers provided for by these rules." MCR 2.114(A) (emphasis added). The trial court did not clearly err by imposing sanctions against appellants under MCR 2.114. [*Droomers III*, unpub op at 4-6.]

Once again, the matter has returned to this Court. Since this Court's last opinion, in 2012, Musilli and Combs obtained a copy of the settlement agreement between plaintiff and Parnell. On October 30, 2015, the trial court issued a writ of garnishment against Musilli, naming Musilli, Brennan, & Associates, PLLC, as the garnishee. Musilli, through Combs, objected to the garnishment, again arguing that the settlement between plaintiff and Parnell extinguished the debt and released Musilli from all claims. At a hearing, Combs contended that procuring the settlement agreement was a "game changer." The trial court, noting the extensive history of this case and the number of times the same argument has been rejected, entered an order enforcing the garnishment. A second order imposed sanctions of $2,125 against Musilli and Combs pursuant to MCR 2.114. The instant appeals followed.

## II. GARNISHMENT

In Docket No. 334822, Musilli challenges the trial court's decision to enforce the wage garnishment, arguing that the trial court's decision was an abuse of discretion. We disagree.

### A. STANDARDS OF REVIEW

"This Court reviews for an abuse of discretion a trial court's decision whether to quash a writ of garnishment." *System Soft Tech, LLC v Artemis Tech, Inc*, 301 Mich App 642, 650; 837 NW2d 449 (2013). "An abuse of discretion occurs when a trial court's decision is not within the range of reasonable and principled outcomes." *Id*. (quotation omitted). The proper interpretation and application of a court rule is a question of law, reviewed de novo on appeal. *Magdich & Assoc, PC v Novi Dev Assoc LLC*, 305 Mich App 272, 275; 851 NW2d 585 (2014). "[T]his Court reviews de novo the determination whether the law-of-the-case doctrine applies and to what extent it applies." *Augustine v Allstate Ins Co (After Remand)*, 292 Mich App 408, 424; 807 NW2d 77 (2011).

## B. DISCUSSION

In opposing the garnishment, Musilli contends that the December 14, 2005 contempt order is invalid because the original 2003 judgment was satisfied by the settlement reached by plaintiff and Parnell. According to Musilli, the claims against MBWP were based on a theory of respondeat superior, "as the claims alleged that MBWP was liable for the action and/or inaction of its agents – John Parnell in particular." Musilli cites various authorities he asserts stand for the proposition that in such circumstances, the release of an agent discharges the principal. Based on these cases, he argues that the settlement agreement between Parnell and plaintiff acted to release claims against MBWP because Parnell was an agent of MBWP. Thus, according to Musilli, his financial obligations have been satisfied by the settlement reached between plaintiff and Parnell.

We could reject Musilli's challenge for a simple reason: he fails to dispute the basis of the trial court's ruling. The trial court did not reach Musilli's substantive argument, instead concluding that it was precluded from considering Musilli's argument by the prior decisions of the trial court and of this Court. Musilli does not address the trial court's reasoning in his brief on appeal. "When an appellant fails to dispute the basis of the trial court's ruling, this Court need not even consider granting" relief. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004) (quotation marks, brackets, ellipses, and citation omitted).

Even if we overlooked this failing and considered Musilli's arguments, there are several reasons why Musilli is incorrect, and why the trial court did not abuse its discretion by enforcing the wage garnishment. We begin with the premise that "[g]arnishment proceedings are entirely creatures of statute and are to be strictly construed." *Westland Park Apartments v Ricco, Inc*, 77 Mich App 101, 104 n 1; 258 NW2d 62 (1977). Pursuant to MCR 3.101(K)(2)(e), an objection to a writ of garnishment may be brought if "the judgment has been paid." However, under MCR 3.101(K)(1), "Objections may only be based on defects in or the invalidity of the garnishment proceeding itself, and may not be used to challenge the validity of the judgment previously entered." Through the garnishment, plaintiff is attempting to recover the damages awarded by the contempt order. But, in objecting to the garnishment and asserting that the debt has been satisfied, Musilli has not asserted that *the contempt order* has been paid. Instead, Musilli's objections to the garnishment essentially contend that the contempt order is invalid because the original 2003 judgment was satisfied by Parnell's settlement. This is clearly an attack on the validity of the judgment previously entered, i.e., the contempt order, not an objection based on a claimed defect in or the invalidity of the garnishment proceeding itself. Accordingly, it is barred by MCR 3.101(K)(1).

Further, as plaintiff correctly points out, Musilli's objections amount to an impermissible collateral attack on the December 14, 2005 contempt order. "[A] collateral attack occurs whenever a challenge is made to a judgment in any manner other than through a direct appeal." *People v Howard*, 212 Mich App 366, 369; 538 NW2d 44 (1995). Musilli indeed filed a claim of appeal from the contempt order. However, he later agreed to dismiss that appeal. *Droomers v Parnell*, unpublished order of the Court of Appeals, entered April 21, 2006 (Docket No. 268480). As such, the order is final and unassailable in this action. See *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987) ("The decision of a court having jurisdiction is final when not appealed and cannot be collaterally attacked."). Thus, Musilli's

liability on the contempt order is final. His claim that the liability has been extinguished by a settlement, one that precedes the contempt order, is an impermissible collateral attack.

And, as plaintiff correctly notes, the law-of-the-case doctrine presents yet another bar to Musilli's argument that the settlement with Parnell has any effect on the amount owed by Musilli under the contempt order. "The law of the case doctrine provides that if an appellate court has decided a legal issue and remanded the case for further proceedings, the legal issue determined by the appellate court will not be differently decided on a subsequent appeal in the same case where the facts remain materially the same." *Grace v Grace*, 253 Mich App 357, 362; 655 NW2d 595 (2002). "Therefore, generally, an appellate court's determination of an issue in a case binds the lower tribunals on remand and the appellate court in subsequent appeals." *Id*. at 363. This Court has repeatedly rejected Musilli's attempts to argue that the settlement with Parnell released Musilli from liability under the contempt order. As this Court explained in its last opinion in this case:

> Here, the record fully supports the trial court's finding that appellants' motion for entry of an order of satisfaction of judgment was brought to harass, delay the proceeding, and/or increase the cost of litigation. *Further, considering the extensive history of the case, appellants cannot seriously contend that their motion was warranted by existing law or brought in a good-faith effort to extend or modify existing law. . . .*
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> In spite of the fact that their argument regarding plaintiff's settlement agreement with Parnell had been rejected numerous times, appellants again asserted it in their motion for entry of an order of satisfaction of judgment. This time, the trial court imposed sanctions for filing a frivolous motion. The history of this case illustrates that the motion was not warranted by existing law or a good-faith argument for the extension or modification of existing law. . . . [*Droomers III*, unpub op at 5-6 (emphasis added).]

In other words, this Court has found not only that Musilli's argument regarding the settlement between plaintiff and Parnell is legally deficient, but also frivolous. *Id*. Yet once again, in this present appeal, Musilli asks that this Court conclude that the monetary judgment has been satisfied through Parnell's settlement with plaintiff. This issue has been decided against Musilli on multiple occasions, both in the trial court and in this Court. The law-of-the-case doctrine prohibited the trial court from reaching a different conclusion, and prohibits this Court from reaching a different result in the present appeal. *Grace*, 253 Mich App at 362-363.

It is true that the law-of-the-case doctrine is not applicable where the facts do not remain materially the same. *Id*. at 362. And one fact has changed—Musilli now has obtained a copy of the settlement agreement between Parnell and plaintiff. However, this fact is not material. It has been known all along that the settlement agreement existed, and it has been consistently represented that the settlement resolved all claims between Parnell and plaintiff. The only new information truly discovered is the amount of the settlement. This amount is entirely irrelevant to the earlier decisions reached in this matter. If it were true, as Musilli argues on appeal, that

the settlement entirely absolved him of any liability, the amount of the settlement would be irrelevant; rather, it is the existence of the settlement that would be dispositive. If, in the alternative, Musilli was entitled to a setoff, this Court could have ruled as such and remanded the matter for a determination of the amount of the setoff. It did not. Again, the amount of the settlement was not relevant to the disposition of this matter on prior occasions. Indeed, while noting that he finally has obtained the settlement, Musilli never explains in his brief on appeal how obtaining this document has changed anything with respect to the multiple prior rulings reached in this case. Musilli fails to demonstrate that the trial court abused its discretion by failing to quash the writ of garnishment.

Even setting aside all of these procedural bars, if it were appropriate to consider the substance of Musilli's argument, it clearly lacks merit. Musilli claims that the quantum meruit claim that resulted in a verdict against MBWP was based on a respondeat superior theory, one holding MBWP responsible for the actions of Parnell. Because MBWP was liable on a respondeat superior theory, according to Musilli, once plaintiff released claims against Parnell, the claims against MBWP were released as well. Insofar as Musilli's arguments depends on the assertion that MBWP was found liable based on a respondeat superior theory, his argument fails for a simple and obvious reason: MBWP's liability did not arise out of a respondeat superior theory.

"The doctrine of respondeat superior is well established in this state: An employer is generally liable for the torts its employees commit within the scope of their employment." *Hamed v Wayne Co*, 490 Mich 1, 10-11; 803 NW2d 237 (2011). Typically, when liability is premised on a theory of respondeat superior, the release of an agent discharges the principal from vicarious liability. *Felsner v McDonald Rent-A-Car, Inc*, 193 Mich App 565, 568; 484 NW2d 408 (1992). However, in this case, the operative complaint in the underlying civil suit did not suggest that MBWP was responsible for Parnell's acts under a respondeat superior theory. Rather, it asserted claims based in contract and in quantum meruit[3] directly against MBWP and Parnell. In the trial court's opinion and order issued after the bench trial held in this matter, the trial court explained:

> At trial, Parnell, Musilli, and Baumgardner, the remaining shareholders of [MBWP], each testified that they believed Droomers should be paid for the efforts that he put into the file. Based upon this testimony by each of [MBWP's] shareholders, the Court finds that [MBWP] has admitted liability on Count II of Plaintiff's First Amended Complaint. . . .
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> The court also finds that Parnell benefited personally from Droomers'[s] work as well in that he received an equal share of the contingent fee . . . . Also,

[3] A claim of quantum meruit is an equitable remedy that permits one who has provided a valuable benefit to another to recover from the party receiving the benefit if it would be inequitable or unjust for that party to retain the benefit. See *NL Ventures VI Farmington, LLC v Livonia*, 314 Mich App 222, 241-242; 886 NW2d 772 (2016).

> Droomers'[s] work freed him to work on other matters for other clients, in addition to adding value to the case that enhanced Parnell's portion of the fee. . . .
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> [T]he court finds that the reasonable compensation . . . is . . . a total of $240,000.
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> The court is satisfied that Plaintiff sustained his burden of proof in establishing a Quantum Meruit claim *against both Defendant Parnell and the firm* [(*MBWP*)].

As can be seen, the trial court did not find MBWP liable for Parnell's actions under a respondeat superior theory. Instead, the trial court found that both MBWP and Parnell benefitted from plaintiff's efforts, and thus, both were responsible for paying damages under a quantum meruit theory. Thus, the entire basis of Musilli's argument—that MBWP was liable under a respondeat superior theory—is patently false. MBWP and Parnell both benefitted directly from plaintiffs' actions, and both were directly liable for the judgment. Consequently, Musilli's argument based on respondeat superior is without merit.

Instead, plaintiff's settlement with Parnell would only release MBWP from liability if the terms of the settlement so provide. See MCL 600.2925d ("If a release or a covenant not to sue or not to enforce judgment is given in good faith to 1 of 2 or more persons for the same injury or the same wrongful death . . . [t]he release or covenant does not discharge 1 or more of the other persons from liability for the injury or wrongful death unless its terms so provide."). Now that the contents of the settlement agreement have been made known, we, and presumably Musilli and his counsel, are well aware that the settlement expressly states that it "does not release Parnell from claims raised in *Droomers v. Parnell, et al*."[4] Rather, the settlement is "limited to claims raised" by plaintiff against Parnell in federal bankruptcy court; and, at most, plaintiff waived "objection to the discharge in bankruptcy of Parnell's obligations arising from *Droomers v. Parnell, et al*." Notably, by its plain terms, the agreement applies only to Parnell. The agreement specifies that it "does not release any claim against" Musilli or the various other defendants. In short, the settlement with Parnell did not extinguish claims against MBWP, and it certainly did not discharge Musilli's liability under the contempt judgment.[5] See MCL

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[4] The agreement identifies "*Droomers v. Parnell, et al*.," as Oakland Circuit Court Case No. 00-024779-CK, which is the case at hand.

[5] Even assuming that MBWP's liability on the underlying civil judgment had been discharged by the settlement or that MBWP was entitled to a setoff for the amounts paid by Parnell, we would still conclude that Musilli is still fully liable under the contempt order. It must be remembered that Musilli's personal liability for monetary damages stems not from the underlying civil judgment, which was against Parnell and MBWP only, but from the December 14, 2005 contempt order. Again, Musilli's opportunity to challenge this order was in the appeal he filed in Docket No. 268480. Musilli, however, chose to dismiss this appeal. *Droomers v Parnell*, unpublished order of the Court of Appeals, entered April 21, 2006 (Docket No. 268480). As was explained, because the appeal was dismissed, the contempt order became final. See *Leahy v*

600.2925d; *Smith v Childs*, 198 Mich App 94, 100; 497 NW2d 538 (1993). Thus, even if there were a procedural mechanism available to Musilli to raise a claim based on this settlement agreement, it would fail.

The only way we could conceive of Musilli challenging the contempt order at this point would be in a motion for relief from judgment under MCR 2.612. Indeed, in his reply brief on appeal, Musilli perhaps realizes this point, making an attempt to cast his actions in this matter as such a motion. To be clear, Musilli has never moved for relief from the contempt order in the trial court. Such a motion would clearly be untimely. See MCR 2.612(C)(2). The contempt order originally entered in 2005; and, even considering the more recent "discovery" of the contents of the Parnell settlement on which Musilli's argument is based, that information has been available to Musilli since 2012. If Musilli were to file such a motion and again raise the argument concerning Parnell's settlement with plaintiff, the argument would also fail on its merits because, as explained, the settlement did not release MBWP from liability on the civil judgment and it certainly did not release Musilli from any liability arising from his contemptuous conduct. For all of these reasons, the trial court did not abuse its discretion when it entered an order enforcing the writ of garnishment and rejecting Musilli's objections.

## III. SANCTIONS

In Docket Nos. 333691 and 333692, Combs and Musilli, respectively, contend that the trial court abused its discretion by imposing sanctions pursuant to MCR 2.114. We disagree.

### A. STANDARD OF REVIEW

A trial court's ruling on a motion requesting sanctions under MCR 2.114 is reviewed for an abuse of discretion. *Sprenger v Bickle*, 307 Mich App 411, 422; 861 NW2d 52 (2014). Underlying factual findings are reviewed for clear error. *Id.* at 423. "The clear error standard provides that factual findings are clearly erroneous where there is no evidentiary support for them or where there is supporting evidence but the reviewing court is nevertheless left with a definite and firm conviction that the trial court made a mistake." *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007).

The trial court imposed sanctions pursuant to MCR 2.114. This court rule provides that the signature of an attorney or party constitutes a certification by the signer that:

> (1) he or she has read the document;
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

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*Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006) ("A decision is final when all appeals have been exhausted or when the time available for an appeal has passed.").

> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. [MCR 2.114(D).]

Pursuant to MCR 2.114(E), if a document is signed in violation of these requirements, the trial court "shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees."

In this case, the record easily supports a conclusion that the objections to the garnishment were not well grounded in fact, warranted by existing law, or a good-faith argument for the extension, modification, or reversal of existing law. As this Court explained in its last opinion in this matter, simply given the number of times the same argument has been presented and rejected, "appellants cannot seriously contend that their [argument] was warranted by existing law or brought in a good-faith effort to extend or modify existing law." *Droomers III*, unpub op at 5.

As was explained, the only difference between the prior cases and the current one is that the settlement agreement has been disclosed. But as was explained in the prior issue, the discovery of this agreement is immaterial to the bases for the prior decisions. Indeed, the settlement agreement only provides additional reasons why Musilli's substantive argument must fail. In addition, the mere fact that Musilli raised the argument as an objection to the garnishment presents yet another reason to find his and Combs's conduct frivolous. As was explained, in a garnishment proceeding, a party may not attack the underlying judgment, MCR 3.101(K)(1), which is precisely what appellants attempted to do in this matter. The trial court's conclusion that the action warranted sanctions under MCR 2.114 is well supported by the record, and the award of sanctions was not an abuse of discretion.

Affirmed. Having prevailed in full, plaintiff may tax costs pursuant to MCR 7.219.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ Michael J. Kelly